IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

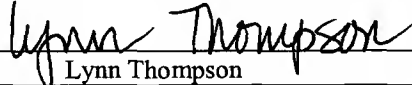|			
Applicant:	John B. Amundson	Examiner:	Le V. Nguyen
Serial No.:	10/726,247	Group Art Unit: 2174	
Filed:	December 2, 2003	Docket No.:H0005441-1161.1137101	
		Confirmation No.: 3535	

Title: CONTROLLER INTERFACE WITH MENU SCHEDULE OVERRIDE

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Mail Stop AF
Assistant Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Applicants submit that the Examiner's rejections contain at least the following clear
errors and/or omissions of one or more essential elements needed for a prima facie rejection.
The rejection of claims 54-57 under 35 U.S.C. §102(e) as anticipated by Alles is in error because
the Examiner has failed to provide a reference that discloses each and every claimed element, in
as complete detail as is contained in the claim, as is required (MPEP § 2131). Regarding claim
54, the Examiner asserts, in the Advisory Action dated November 16, 2007, section (a), that the
argued element of two distinct set points is not recited in the claims. Lines 5 and 10 of claim 54
clearly recite two different set points used to control an environmental condition. The Examiner
asserts that Alles discloses a first set point (2113) and a second set point (2116). However, one
of ordinary skill in the art would clearly recognize that set point (2113) is a cooling temperature
set point and that set point (2116) is a heating temperature set point. As such, Alles appears to
disclose nothing more than setting standard heating and cooling temperature set points, and thus
cannot be considered as deactivating a first portion of an HVAC system to not modify and
control at least one environmental condition of an inside space in accordance with a first set
point, and then activating the same first portion of the HVAC system to again modify the
environmental condition in the inside space if the environmental condition in the inside space
passes a second set point.

Regarding claim 57, the Examiner, in section (b) of the Advisory Action, points to
column 27, lines 17-27 and line 50 through column 28, line 8, column 31, lines 40-45, and
column 32, lines 11-12 of Alles. These portions of Alles merely describe the "comfort climate"

and "enter time" portions of the normal schedule set-up program (column 27), "Comfort-Climate" popup menu for editing temperature ranges for various time periods in the normal schedule (column 31), and the "off", "mid", and "high" circulation modes that are available in the normal schedule (column 32). These changes appear to relate to the <u>normal schedule</u> of the thermostat, which is clearly not the same as: permitting the user to enter a time indicator; <u>overriding</u> the <u>normal</u> fan operation in accordance with the time indicator; and subsequently <u>returning</u> to <u>normal</u> fan operation. As such, Alles does not teach each and every element of claims 54-57, thus the rejection of claims 54-57 is clearly in error.

The rejection of claims 66-71 as being anticipated by Ehlers is also in error. Claim 66 recites sensing a first environmental condition <u>outside</u> the structure, and adjusting a first set point if the outside condition passes a predetermined value. In contrast, Ehlers uses an indoor humidity to adjust an indoor temperature set point. The Examiner argues, in section (c) of the Advisory Action, that Ehlers teaches a thermostat coupled to sensors adapted to sense outdoor air quality, citing column 28, lines 62-64. While Ehlers appears to teach sensing various aspects of outside environment, Ehlers clearly does not appear to teach adjusting <u>a first control set point if an environmental condition outside passes a predetermined value</u>, as is recited in claim 66.

The rejection of claims 1-49 as being obvious over Alles in view of Liebl is also in error. Claim 1 recites a method in which a <u>regular</u> schedule is provided for a controller, a user is provided with two or more schedule <u>override</u> choices, and the user is permitted to select one of the schedule <u>override</u> choices, causing the regular schedule to be <u>overridden</u> by the selected schedule override choice, and then resuming the regular schedule. Alles clearly fails to disclose such a method. In section (e) of the Advisory Action, the Examiner asserts that users dictate their "regular" schedule <u>by selecting schedule overrides</u> and selecting temperature settings for various time periods. The Examiner's statement is contradictory because how can one set up a "regular" schedule by selecting regular schedule <u>overrides</u>? Applicants submit that one of ordinary skill in the art would clearly understand that an "override" is by definition an overtaking or replacement of a previous "regular" schedule. When one is setting up a <u>regular</u> schedule, as

taught by Alles, one selects and adjusts regular schedule parameters, not "overrides". Alles does not appear to teach anything regarding schedule <u>override choices</u>, as is recited in the claims.

The Examiner appears to have misinterpreted Alles, as the cited passages pertain to programming particular parameters of the <u>regular schedule</u> of Alles. As one skilled in the art would clearly recognize, the time periods of sleeping, active, empty, and relaxing refer to time periods within the <u>regular schedule</u> of Alles, and <u>not</u> to schedule <u>override</u> choices, as asserted by the Examiner. In fact, the time periods of "sleeping", "active", "empty" and "relaxing" would appear to correspond to the regular schedule time periods of "sleep", "wake", "leave" and "return", which have been commonly used in conventional electronic thermostat for many years.

The Examiner also cites Liebl , Figs. 2 and 9(A-C). Liebl, however, appears to merely disclose a manual override by having the user simply change the current set-point temperature. Liebl does not teach providing any schedule override <u>choices</u> to a user, and more particularly, to providing <u>two or more</u> schedule <u>override</u> choices to a user via the user interface. Indeed, the Examiner admits, at the top of page 7 of Office Action dated August 23, 2007, that Liebl does not disclose temporarily overriding a regular schedule, as recited in the claims.

The Examiner appears to also rely upon Ehlers to suggest temporarily overriding a regular schedule. However, Figure 4H (cited by the Examiner) appears to be nothing more than a display screen that permits the user to define when to start and stop time periods of a <u>regular</u> schedule, such as sleep, home and away time periods. This is nothing more than programming a regular schedule as described above with respect to Alles. Figure 4H of Ehlers does not appear to relate to a temporary schedule <u>override</u>, as the Examiner appears to be suggesting. Thus, Ehlers cannot be considered as remedying the noted shortcomings of Alles and Liebl.

Claim 11 is directed to a controller that includes a programmable <u>regular</u> schedule, and a user interface adapted and configured to provide two or more schedule <u>override</u> choices to a user, and for accepting the selection of one of the <u>two or more</u> schedule override choices from the user. Claim 11 further recites that the controller enters an <u>override mode</u> for <u>overriding</u> the <u>regular</u> schedule based on the user responses provided by the user interface, and the controller automatically <u>returning</u> to the <u>regular schedule</u> when the selected override choice <u>expires</u>.

In section (f) of the Advisory Action, the Examiner asserts that Alles, Liebl and Ehlers teach a controller comprising a programmable regular schedule and a user interface (UI) that accepts selection schedule override choices from the user wherein the controller enters a mode for overriding the regular schedule based on the user responses via the UI at a first time and automatically returns to the regular schedule when the selected override choice expires, including temporarily overriding the regular schedule in an override mode based on the selected override choices at a second time later than the first time. As discussed above, none of the references teach or suggest a method or controller that provides a user with two or more schedule override choices, as is recited in claim 11. At best, Liebl appears to teach using the temperature "up" and "down" buttons to increase or decrease the current temperature set-point as a way to override the current schedule. However, the controller of Liebl clearly does not appear to provide two or more schedule override choices to the user, as recited in claim 11. Liebl thus does not provide what Alles lacks regarding override choices. Like Liebl, Ehlers also does not appear to teach a controller with a ser interface that provides two or more schedule override choices to the user, as is recited in claim 11.

Claims 21-23 recite a controller similar to claim 11, but recites that the two or more schedule override choices includes a schedule override choice of "Come Home Early", "Come Home Late", and "Get Up Early", respectively, and that the regular schedule is temporarily overridden based on the user response provided via the user interface. For at least the reasons set forth above, neither Alles, Liebl nor Ehlers, alone or in combination, teach or suggest a controller having the recited elements. The Examiner has taken Official Notice of the use of user inputs labels, such as "Come Home Early", as well known in the art. Applicants assumed that Official Notice was only being taken for the use of user input labels generally, but not for the specific combination of elements recited in the claims. If the Examiner is now attempting to take Official Notice beyond this basic fact, Applicants hereby traverse the Examiner's taking of Official Notice of such additional facts. Claims 21-23 recite various user input phrases as schedule override choices presented to the user, which is clearly distinguished from the general use of user input labels.

In section (f) of the Advisory Action, the Examiner points to Figs. 21-23 and column 32, lines 28-47 of Alles as teaching displaying a natural language schedule override choice that users input. The Examiner has clearly mischaracterized the reference. The cited portion of Alles actually teaches how the user, during the setup of the regular schedule, can edit the names of the various regular schedule time periods. In FIG. 21, the user has named a Comfort Climate time period "Sleeping", and has selected cooling when the temperature is above 76 degrees and heating when the temperature is below 68 degrees. The fact that Alles teaches selecting "Return" after the changes are made to save the changes further indicates that this is part of the regular schedule set-up, and not an override choice. Applicants submit that one of ordinary skill in the art, upon reading Alles, would clearly not interpret the Comfort Climate editing process as corresponding to an "override" choice, as is recited in the claims.
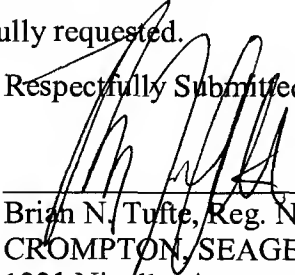
Independent claims 24 and 44 recite methods including providing one or more schedule override choices and temporarily overriding the regular schedule. Neither Alles, Liebl nor Ehlers, alone or in combination, teach or suggest such method steps. Further, neither Alles, Liebl nor Ehlers teach, disclose or suggest beginning an overriding step at a second time that is later than the first time, as recited in the claims.

The rejection of claims 50-53 as obvious over Alles in view of Riley et al. and Ehlers, and the rejection of claim 58 as being obvious over Riley et al. in view of Alles are also in error, for the reasons set forth above and those detailed in the Amendment filed October 23, 2007.

Favorable reconsideration is respectfully requested.

Respectfully Submitted,

Date: November 21, 2007

Brian N. Tufte, Reg. No. 38,638
CROMPTON, SEAGER & TUFTE, LLC
1221 Nicollet Avenue, Suite 800
Minneapolis, Minnesota 55403-2420
Telephone: 612-677-9050
Facsimile: (612) 359-9349